

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

June 8, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:40 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Item #1. Approval of the Minutes of the May 7, 2001 Commission Meeting.

The minutes of the May 7, 2001 Commission meeting were distributed to the Commission and made available to the public. Commissioner Swanson motioned that the minutes be approved. Commissioner Knox seconded the motion. There being no objection the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #6. Annual Technical Clean-up Packet: Adoption of Proposed Amendments to Regulations 18405, 18427.1, 18723 and 18960 and Repeal of Regulation 18416.

This item was approved on the consent calendar without objection from the Commission.

Item #4. Campaign Disclosure - New Online/Electronic Disclosure Reports; Emergency Adoption of Regulations 18539, 18539.2 and 18550.

Political Reform Consultant Margaret Figeroid presented three proposed emergency regulations implementing new electronic reporting provisions required by the passage of Proposition 34. The new regulations created forms E-496 and E-497. The proposed forms may be used to electronically file the 24-hour late contribution and late independent expenditure reports pursuant to Government Code sections 84203 and 84204.

Emergency Regulation 18539

Ms. Figeroid presented proposed emergency regulation 18539 implementing Government Code section 85309, which requires 24-hour online or electronic reporting of certain contributions of \$1,000 or more made during an "election cycle" by committees that are required to file electronically.

There being no objection, the Commission adopted regulation 18539.

Emergency Regulation 18550

Ms. Figeroid explained that proposed emergency regulation 18550 implemented Government Code section 85500, requiring 24-hour online or electronic reporting of certain independent expenditures of \$1,000 or more made during an "electronic cycle" by committees that are required to file electronically.

Commissioner Downey motioned that regulation 18550 be adopted, changing the word "contributions" on line 10 of the proposed regulation to "independent expenditures." The motion was seconded by Commissioner Knox. There being no objection, the motion carried.

Emergency Regulation 18539.2

Ms. Figeroid presented this proposed emergency regulation implementing Government Code section 85310, which requires 48-hour electronic reporting of a payment made or a promise of payment totaling \$50,000 or more for certain communications.

Ms. Figeroid stated that staff incorporated changes directed by the Commission following the May 7, 2001 Commission meeting.

Ms. Figeroid noted that the Commission directed staff, at its May 7, 2001 meeting, to explore the Franchise Tax Board's (FTB) method of verification for electronically filed tax returns where no paper form was required. Staff learned that FTB filers must sign and date their tax form 8453, verifying the content of the return, and that the signed form 8453 must be kept by the filer for four years. She explained that language in proposed Regulation 18539.2, subdivisions (b), (d) and (e) provided a means of verification similar to that used by FTB.

Commissioner Scott joined the meeting at 9:50 a.m.

Ms. Figeroid, in response to a question, explained that the only way to ensure that the forms were signed would be to audit the filer.

Chairman Getman stated her concern that the Commission should not adopt regulations that it cannot enforce, and that there was no way to know whether the forms had been signed.

Commissioner Downey noted that the Commission would have to trust the filer.

Commissioner Scott suggested that the issue could be revisited if problems were identified after the Commission had performed some random audits.

Chairman Getman stated that it was critical that the forms be signed, dated and verified, but noted that it could not be done in the small window of time allowed.

Commissioner Knox suggested that the forms be transmitted to the Secretary of State's office by a certain time.

Enforcement Chief Steve Russo stated that enforcement staff preferred a short window of time.

Ms. Figeroid explained proposed section (e)(3) of the regulation, and suggested that the following wording be added to the end of the first sentence: "...following the date from which the campaign report to which they relate is filed." She noted that the four-year retention option was tied to regulation 18401; the five year option was related to the statute of limitations for administrative proceedings. Filing officers must retain the form for seven years. She added that Enforcement staff recommended five or seven years, and preferred seven years.

General Counsel Luisa Menchaca stated that the declaration retention should be tied to the record-keeping statute, and that it would be more consistent if the declaration was kept for four years.

Commissioner Scott noted that retaining the declaration for only four years could impede enforcement actions because it would eliminate the records required to prove a case after four years.

Chairman Getman questioned whether it would be legal to change it to seven years at this point, since that was not noticed as part of the staff recommendation.

Ms. Menchaca recommended that the Commission consider either four or five years, the options provided in the staff memo.

Chairman Getman stated that she was uncomfortable with choosing a seven year retention period without public notice, and suggested that the Commission adopt the five year retention schedule and revisit the issue when the regulation is permanently adopted. She motioned that the Commission approve proposed Regulation 18539.2 for emergency adoption with the following three changes:

Section (e)(2) would require that the original declaration be signed, dated and verified on the same date that the report is transmitted to the Secretary of State.

Section (e)(3) the original signed declaration would be retained by the filer for five years following the date that the campaign report to which it relates is filed.

Section (f) would read: "An electronically transmitted report will be considered complete and filed when the conditions in subdivision (e) of this regulation are met."

Commissioner Downey seconded the motion. There being no objection, the motion carried.

Item #2. Approval of the Minutes of the May 7, 2001 Commission Meeting (cont.)

Commissioner Scott motioned that the minutes be reopened so that the comments she made in a memorandum dated May 7, 2001 and addressed to the Commissioners could be read into the minutes. Commissioner Knox seconded the motion. Commissioners Scott, Downey, Swanson, Knox and Chairman Getman voted "aye". The motion passed unanimously.

Item #3. *In re Olson* Opinion Request, FPPC No. O-01-112.

Ms. Menchaca presented the request by the California Democratic and Republican Parties concerning their reporting obligations under the PRA in light of two newly enacted ordinances by the city of Los Angeles. She noted that staff does not believe that the Commission had the authority to decide the validity of local ordinances, and noted that Government Code § 81113 allows a local agency to impose additional reporting requirements on any person providing that it does not prevent compliance with the PRA.

Ms. Menchaca noted, however, that it was appropriate for the parties to ask the Commission to consider their duties under the Act because of the existence of § 81013 and other statutes, and also because of emergency Regulation 18753.

Ms. Menchaca urged the Commission to consider Sections 81013, 81009.5, 85703, and 85312 when deliberating the question. She added that the city attorney's analysis indicates that the addition of Section 85312 throws off the delicate balance that existed before Proposition 34. The analysis did not focus on §85703, however, where it is expressly stated that local jurisdictions' laws cannot conflict with §85312.

Ms. Menchaca noted that staff did not fully articulate the state interests in their analysis. It is important, she explained, that §85312 be interpreted in a manner mandated by Proposition 34. Proposition 34 provides that the political parties play an important role in the campaign process, and one of its purposes was to strengthen the role of the political parties.

Ms. Menchaca explained that both the political parties and the city of LA noted concern over the issue of earmarking discussed on page 7 of the staff memo. She noted that staff was merely trying to limit the scope of its analysis.

Ms. Menchaca stated that while this opinion is not premature, this was the early stage of interpreting Proposition 34, and permanent regulations may impact the scope of the member communication provision.

Lance Olson, representing both the Republican and Democratic parties, explained that both parties are committed to disclosure. He explained that SB 34 would amend

Proposition 34 by putting parties back on the reporting schedule required prior to Proposition 34. If SB 34 passes (and Mr. Olson believed that it would), pre-election reporting will be required. However, there will still be a problem with the LAEC reporting schedule.

Mr. Olson agreed with the staff analysis concluding that a conflict existed, and noted that an analysis of the *Cal Fed* case shows that it is correct to interpret this as a statewide concern. He believed that the analysis provided by LAEC Assistant City Attorney Anthony S. Alperin was thoughtful, but narrowly tailored and overstated the case.

Mr. Olson pointed out that it is important to look at the implications of this question. If the Commission chose to accept Mr. Alperin's argument, then charter cities could put the PRA secondary to local ordinances. That could open the door for less stringent reporting requirements. He added that if SB 34 passes, the city of Los Angeles will lose nothing.

Commissioner Downey noted that both Mr. Olson and Mr. Alperin have correctly focused on the statewide interest issue and asked Mr. Olson to explain those interests.

Mr. Olson responded that there were two statewide interests: (1) Avoidance of duplicative reports; and (2) State policy that communications to members should not be regulation.

Commissioner Downey stated that, under the *Johnson* case, uniformity was not considered a statewide concern.

Mr. Olson responded that in *Johnson* it was a blanket prohibition.

Commissioner Scott stated that there was a distinction between a statewide interest and a statewide concern under *Johnson*. A statewide concern is the legal conclusion reached after the analysis in *Johnson*. She asked Mr. Olson what would happen if there was additional reporting, noting that if SB 34 passes the same reporting will again be required.

Mr. Olson responded that the city and state have different reporting requirements as well as different timing requirements for the filings. He noted that SB 34 deals only with political parties. If the Commission agreed with LAEC's argument, he added, then local jurisdictions could change the rules under the PRA.

Commissioner Scott expressed her concern that, if she agreed with Mr. Olson's argument, it would impair LA's public campaign finance system. She pointed out that the LAEC believed that the information required under the ordinances was key to their public campaign finance system.

Mr. Olson cited the *CalFed* case in which the court noted that, if the cities lose money as a result of the court finding, it was not relevant.

Commissioner Downey stated that the city was acting reasonably with regard to their public campaign finance system.

Mr. Olson pointed out that a lot of spending occurred that was not reported, according to editorials in the Los Angeles Times.

Chairman Getman stated that the Commission may not have the authority to determine that the state law can override local law, and suggested that this may be a matter to decide in court.

Mr. Olson responded that the Commission had a responsibility to defend the PRA when a conflict exists.

Commissioner Knox noted that the *Johnson* decision stated that uniformity is not a statewide concern.

Mr. Olson responded that failure to have uniformity could result in discouraging organizations from communications. He pointed out that the parties would have to file a variety of additional reports if the Commission accepts the LAEC argument. Mr. Olson stated that the government should not regulate what organizations say to their members.

Chairman Getman noted that localities may need information from the pre-election reports.

Mr. Olson conceded that point, but added that the legislature can impose additional reporting obligations. He explained that the Los Angeles (LA) ordinances required that all contributions be reported, not just those concerned with LA elections. He added that only those expenditures related to member communications would have to be reported under those ordinances.

LeeAnn Pelham, Executive Director of the LAEC, explained that the new LA ordinances required reporting funds for a specific time period, and that the expenditures were important. She noted that the city's public campaign funding program was significant. It is a voluntary system and needed incentives. The incentive offered to candidates for participating in the voluntary expenditure limit program was matching funds. When a candidate who is not participating in the voluntary expenditure limit exceeds an expenditure amount, candidates participating in the voluntary program are then allowed to exceed their spending limits. She noted that this system has been used for 10 years, but that Proposition 34 created a new loophole. She noted that the emergency ordinances that were passed in the local jurisdiction are no longer in effect, but that they could come up again.

Ms. Pelham agreed that this was a difficult issue, but believed that the need for uniformity was given too much weight. She explained that the LAEC had distributed a fact sheet to help with compliance of the emergency ordinances. She believed that if the

Commission agreed with Mr. Olson's argument, then uniformity would undermine LA's spending limit system.

In response to a question, Ms. Pelham explained that the voluntary expenditure limits were in place during the last election, and that those limits were lifted on the basis of expenditures by candidates who did not participate in the voluntary expenditure limits. Under the LA ordinance, all independent expenditures of \$1,000 or more must be reported.

Chairman Getman noted her concern that the ordinance required reporting of contributions that were outside the sphere of LA. Up until now, she noted, LAEC's reporting requirement was confined to LA.

Ms. Pelham responded that the LAEC was concerned about earmarking when that decision was considered. In response to a question, she explained that the LAEC held two days of discussion over the issues, and that those discussions included consideration of whether to require the reporting of contributions outside the sphere of LA. She noted that the ordinances apply to any committee, and did not prevent anyone from contributing.

Tony Alperin, from the LA City Attorney's office, questioned whether the Commission had the authority to issue an opinion on this question. He noted that section 83114 of the PRA states that an opinion may be requested from the Commission regarding the duties of the person requesting the opinion under the PRA, and that this was not the question posed by the requestors. He noted that §81009.5 does not impose any duties on the political parties. This opinion asked what duties the political parties had under the municipal law, given the provisions of the PRA. Therefore, Mr. Alperin asserted that the Commission did not have the authority to opine on the question.

Commissioner Knox noted that "duties" can be interpreted broadly.

Mr. Alperin responded that a duty is something required or not required, and noted that the PRA would not be violated by compliance with the LA ordinances.

Commissioner Knox responded that if the PRA excuses a violation, then the Commission should opine.

In response to a question, Mr. Alperin clarified that even though the Commission had the right to send a letter to someone interpreting the PRA, it did not have the authority to issue this opinion because the PRA specifically limits the situations under which the Commission can issue an opinion.

Mr. Alperin asserted that the court should opine, noting that the substantive question was whether the state had the ability to enforce state law in a manner that would preempt a municipal affair. He noted that *Johnson* made clear that statewide concerns must be more important than city concerns in order to preempt a city ordinance.

Mr. Alperin explained that the requestors had set forth two concerns. The first concern was that the political parties would be burdened by additional reports as a result of the ordinance. Mr. Alperin agreed that the ordinances require additional reporting, but did not agree that the additional reporting was very burdensome, and suggested that the Commission ask what harm would come from the additional reporting.

Commissioner Knox observed that no one in *Johnson* had inconsistent filing requirements.

Mr. Alperin noted that this did not involve a myriad of laws and that the political parties could comply. He stated that the city's interest was greater than the state interest, and reminded the Commission that the PRA requires disclosure.

Chairman Getman observed that the city election was a municipal concern, but that the LA ordinance involved disclosure of contributions not involved in the municipal election. She asked what the city's interest was in knowing the large contributions that were not spent in the Los Angeles election.

He explained that the LAEC required that all contributions be reported to make the reporting easier for the candidates. He added that the ordinances can be tailored, and that disclosure should be limited to contributions earmarked or solicited. This was not done with the original emergency ordinance because it was determined to be too burdensome.

Mr. Alperin began addressing the second concern of the requestors regarding membership communications by pointing out that the communications involved in this issue were communications to voters as voters. The city was not attempting to interfere with member communications. Mr. Alperin stated that the PRA does not define "member" with regard to communications by a political party to voters. He was concerned that contributions to a political party could be earmarked for a particular candidate, then used to send a mailer, and the contribution would not have to be disclosed. He discussed provisions of the proposed SB 34, and urged the Commission to make their decision based solely on the issues as presented in the opinion request.

In response to a question, Mr. Alperin stated that the LAEC did not discuss communicating to the state the difficulty presented by Proposition 34 when the emergency ordinances were passed because there was not enough time.

Commissioner Swanson asked what benefits the LAEC saw as a result of the emergency ordinances.

Ms. Pelham responded that \$860,000 was reported for member communications, and that contributions were posted to the website as they came in, making them available to the public.

Commissioner Downey asked Mr. Alperin whether the city wanted the Commission to weigh state versus city concerns.

Mr. Alperin responded that the state constitution puts certain issues outside of state jurisdiction.

Chairman Getman left the meeting at 11:57 a.m.

Commissioner Downey and Mr. Alperin discussed the *Johnson* case, and Commissioner Downey noted that the *Johnson* case was theoretical but that this situation was not. He understood that the municipality was injured but noted that the political parties were injured too.

Mr. Alperin questioned whether the injury to the political parties was a legal injury, noting that the First Amendment protects the political parties.

Chairman Getman returned to the meeting as 12:02 p.m.

Bob Stern, President of the Center for Governmental Studies, stated that the issues were simple: whether the Commission wanted timely disclosure or uniformity and simplicity. He added that there must be disclosure, and that the staff proposal would result in local jurisdictions losing information.

Mr. Stern stated that there is little burden on the candidates with online reporting, and that reporting of earmarked or solicited contributions only would not be enough because it would be too easy to manipulate. He supported disclosure of all contributions because it is essential and fundamental.

Mr. Stern stated that the LAEC and the FPPC should work together, and that the FPPC should reach out to local jurisdictions.

Chairman Getman noted that the FPPC has made great efforts and is committed to working with local entities.

Commissioner Scott urged the Commission to hold their decision on the opinion until the next meeting and work with the LAEC.

Jim Knox, from California Common Cause, supported the LAEC position. He believed that the staff analysis would endorse a rollback of disclosure and would undermine the LAEC system of public financing. He suggested that the situation will get worse if the Commission accepts the staff analysis because political parties could become avenues of laundering. Common Cause was most troubled that concerns over uniformity and simplicity seemed paramount. He believed that the public needs more disclosure, not less.

Stephen Kaufman, from Smith Kaufman in Los Angeles, stated that the ordinances require that organizations comply with laws that conflict with state law, and noted that, if allowed to continue, it would deter participation in the political process. The organizations would be burdened because there would be different reporting and threshold requirements for the different jurisdictions, and there were also different periods of reporting.

Eric Wooten, from the League of Women Voters, stated that there must be full public disclosure, otherwise it would jeopardize LA's public funding system.

Ms. Pelham stated that the new ordinances required 24-hour notice and a pre-election notice one-week before the election. She noted that the LAEC tried to make it easier for smaller organizations by lifting the \$1,000 level to \$10,000.

Lance Olson, requestor of the opinion on behalf of the California Republican and Democratic parties, stated that the city's interest is an overstated argument, and that the staff analysis would not affect LA's public funding program. He believed that it would only affect the lifting of ceilings on expenditures, and noted that Proposition 34 provided that communications to members were no longer considered independent expenditures.

The Commission adjourned to closed session at 12:35 p.m.

The Commission returned to public session at 1:40 p.m.

Chairman Getman noted that the Commission first had to determine whether an actual conflict existed between the state law and the city law.

The Commission agreed that a conflict existed.

Chairman Getman stated that the next step was to determine whether the conflicting state law qualified as a statewide concern.

Commissioner Scott stated that the Commission should determine whether there was a state concern and whether it was narrowly tailored. She agreed that there was a state concern, but the Commission had to determine whether the state concern trumped the municipal concern.

Chairman Getman asked the Commission whether they were agreed that it was appropriate for the Commission to issue an opinion. All of the Commissioners agreed that it was appropriate.

Commissioner Scott stated that she was comfortable with issuing an opinion, but noted that this was a jurisdictional concern and that the *Johnson* decision included language noting that even the legislature cannot make the ultimate determination between a municipal issue and a state issue. She believed this was an issue that should be decided in court of law.

Chairman Getman agreed, and stated that the Commission can opine on the interpretation of the state statute, but cannot nullify a local law.

In response to a question, Mr. Tocher stated that the *Johnson* case provides no substantial analysis of the benefit of uniformity. He compared *Johnson* and *CalFed* and their treatment of the issue of uniformity.

Ms. Menchaca clarified that §81009.5 was amended two or three times, once by legislation sponsored by the Commission.

Commissioner Knox asked whether greater deference should be given to the city concerns under Article II Section 5.

Mr. Tocher responded that the courts do not compartmentalize in that manner, and that it was important to identify the state and local concerns. He noted that the *Johnson* decision did not discuss balancing the concerns, and questioned whether it was necessary to identify the statewide concern.

Commissioner Knox agreed that the *Johnson* case does not address balancing state vs. local concerns, but asks whether a state concern can be identified. He asked whether the concerns needed to be balanced or just identified.

Mr. Tocher responded that it is a difficult question, and that if it was only necessary to identify a state concern, then that concern would trump the municipal concern.

Ms. Menchaca noted that the staff memo approached the issue as one of identifying and not weighing the concerns.

Commissioner Downey stated that he was troubled by the concept of balancing the concerns.

Mr. Olson stated that, if the Commission were balancing the concerns, then the political parties had the better argument.

Commissioner Downey agreed with Commissioner Knox that if there were any state concern, the local jurisdiction was trumped by the state jurisdiction.

Mr. Tocher referred to the *CalFed* opinion, noting that the court determined in that opinion that the state has the more substantial interest.

Commissioner Scott did not agree that identification of a state concern would be enough to determine that the state concern trumps the municipal concern. She read a passage from the supreme court opinion which she interpreted as stating that the statewide concern must transcend core municipal values. She believed the language to say when there is a changing regulatory concept the state law needs to be flexible. She did not

believe that the Commission should determine that the state interests automatically trump the local interests or that uniformity was necessary.

Mr. Tocher compared the *Johnson* and *CalFed* cases, noting that this case is not exactly like either of those cases. In *Johnson*, the local ordinance was essentially constitutionally required. The reporting system required by the LA ordinances is not constitutionally required.

Commissioner Scott stated that the Commission should decide on this issue as if they did not know that the contribution limits were lifted in the LA election.

Ms. Menchaca stated that those issues belonged in the first step of the analysis, and that the existence of a conflict was already established.

Commissioner Swanson stated that the PRA stands on its own, and that there is no conflict in that sense.

Chairman Getman agreed with Mr. Tocher, noting that this analysis falls in-between *Johnson* and *CalFed*. She noted that LA stepped beyond a purely municipal concern by requiring disclosure of contributions that were not related to the municipal election. She stated that the PRA tries to balance statewide concerns with local concerns.

Chairman Getman did not believe that the FPPC, as an enforcement and regulatory agency, should allow charter cities to impose different or additional reporting requirements on statewide organizations because it would result in a patchwork of different disclosure requirements for statewide entities. This would inhibit willingness to participate in the political system and would make it harder for the FPPC to regulate and enforce the law.

Chairman Getman noted that voters expressed another state concern when they passed Proposition 34; the ability to communicate with one's fellow members without undue regulation. Whether the Commission agreed with that was irrelevant, but the Commission was still required to enforce the law. She believed that this was an important statewide concern.

Commissioner Scott questioned whether it would be illegal for a city to require just contributions from the Democratic Party. She also asked whether the LA ordinance could be tailored.

Chairman Getman responded that she understood that it could not be tailored because people across the state contribute money to the political parties, and that, unless the money is specifically earmarked for a local campaign, there will be no way of knowing what segment of the contribution went to the municipal election.

Commissioner Scott expressed her concern that some entities could become a conduit for contributions. She was also concerned that the staff analysis could erode the right to public financing.

Chairman Getman responded that those concerned should ask that the state law be changed.

Commissioner Scott stated that the issue was about the core and plenary power of a city. She believed that was a state concern.

In response to a question, Chairman Getman suggested that if the LAEC did not require the contribution information and the ordinance required reporting of expenditures only, it might be a different analysis.

Commissioner Downey agreed with the requestor's argument that uniformity and simplicity were a concern, noting that the state concern with multi-jurisdictional issues was valid. He agreed with the staff conclusion.

Chairman Getman expressed concern that LA thought it was proper to change a law in the middle of an election, and that the change could have statewide repercussions.

Commissioner Scott pointed out that the statewide law changed during the municipal election, and the municipal ordinances were passed to deal with Proposition 34.

Chairman Getman agreed, but noted that Proposition 34 caused changes throughout the state that would have to be dealt with by the legislature.

Commissioner Swanson stated that local jurisdictions can request changes in the state law. She believed that the state regulations supercede the local regulations.

Commissioner Knox stated that he was persuaded by the requestor's argument, and that the LA ordinance was too broad because it included requiring disclosure of statewide contributions. He believed that the ordinance could possibly be tailored to work without requiring the reporting of statewide contributions.

Commissioner Scott stated that the role of citizens and the public interest was understated, and that this was a constitutional issue. She did not believe that charter cities should have to go to the legislature for clarification of their role. She added that timely disclosure was needed at a local level, and that the statewide concerns should not trump the municipal concerns. She did not support the staff conclusion.

Chairman Getman motioned that the Commission direct staff to draft an opinion stating that the LA ordinances conflict with state law and touch on extra-municipal matters that are of statewide concern, and thus the state law preempts the municipal ordinances.

Commissioner Knox seconded the motion.

Commissioner Scott requested that the reference to LA possibly wanting information should be struck from the opinion because the Commission should not make a value judgement on whether the information is important or whether LA considers the information important.

Commissioners Deaver, Knox, Swanson and Chairman Getman voted "aye."
Commissioner Scott voted "nay." The motion carried by a vote of 4-1.

Items #12, #16, #17, #18, #19(c), #19(d), #19(f), #20, #21, #22, and #23.

Commissioner Scott requested that the issues of mitigation and charging be addressed as an agenda item.

There being no objection, the following items were approved by the Commission on the consent calendar:

- Item #12. *In the Matter of Roger Klorese, FPPC No. 00/403.* (2 counts.)**
- Item #16. *In the Matter of Marco Polo Cortes and Cortes 2000, FPPC No. 00/109.* (1 count.)**
- Item #17. *In the Matter of Sharon Martinez, Friends to Elect Sharon Martinez for Monterey Park City Council, and Sally Martinez, FPPC No. 00/21.* (1 count.)**
- Item #18. *In the Matter of Tom Torlakson, Tom Torlakson for Senate, and Michael Pastrick, FPPC No. 00/358.* (1 count.)**

Item #19. Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure.

1st Tier Violation - \$400.00 fine per count

- c. *In the Matter of Magana Cathcart & McCarthy, FPPC No. 2001-230.* (1 count.)**
- d. *In the Matter of 24 Hour Fitness Inc., FPPC No. 2001-232.* (1 count.)**

2nd Tier Violation - \$600.00 fine

- f. *In the Matter of Baron & Budd, P.C., FPPC No. 2001-236.* (1 count.)**

- Item #20. *In the Matter of Vincent Reyes, FPPC No. 99/550.* (1 count.)**
- Item #21. *In the Matter of Lawrence Lake, FPPC No. 2000/614.* (1 count.)**
- Item #22. *In the Matter of Linda Engleman, FPPC No. 01/76.* (1 count.)**
- Item #23. *In the Matter of Mark Briggs, FPPC No. 2000/385.* (1 count.)**

The Commission adjourned for a break at 2:45 p.m. The meeting reconvened at 3:00 p.m.

Item #5. Campaign Disclosure Forms - Emergency Adoption of Regulations 18421.4 and 18542; Approval of Revised Campaign Disclosure Forms.

Regulation 18421.4

Technical Assistance Division Chief Carla Wardlow presented proposed Regulation 18421.4 for adoption by the Commission. She noted that staff received a letter from Kathy Donovan suggesting that the provisions of the proposed regulation not apply to major donor committees, and she supported that suggestion because the major donor committees terminate at the end of each year. She explained that they file contribution reports when they qualify as major donors, and that there was no way to track the major donors from year-to-year because there was no auditing trigger.

Chairman Getman noted that the committees would report the cumulative amount of the donations received from the major donors, and that the major donors only report their contributions per calendar year.

Commissioner Downey suggested that, since Government Code §§ 82013(c) and (a) define major donor and recipient committees, the title of the proposed regulation be changed to reflect staff's recommendation.

Ms. Wardlow reported that staff recommended that candidates who have accepted the voluntary expenditure limit be required to disclose their cumulative expenditures for each election.

There was no objection from the Commission to adopting proposed regulation 18421.4 with the following changes:

The title of the regulation to read: **"18421.4. Reporting Cumulative Amounts for State Candidates and State Recipient Committees"**.

Page 1, line 5 of the proposed regulation be changed to read, "...candidates and recipient committees defined in subdivision (a) of Government Code § 82301(a) must..."

The option on page 1, line 9 of the proposed regulation to read, "must."

Regulation 18542

Ms. Wardlow presented proposed regulation 18542, noting that staff recommended emergency adoption of this regulation with the 24-hour filing deadline in subdivision (b)(1).

Chairman Getman explained that the regulation was drafted ~~so~~ to implement the requirement that candidates ~~must~~ report personal contributions to a campaign if those contributions are in excess of the voluntary expenditure limits.

Commissioner Swanson requested that Page 2 Line 3 of the proposed regulation be corrected to read, "November 7, 2000."

Chairman Getman asked whether filing the amended 501 was required only if someone in the race has accepted the voluntary expenditure limit, noting that the statute otherwise does not require it.

After further discussion, Chairman Getman motioned that Regulation 18542 be approved with the following changes:

1. The following wording to be added at the end of the sentence on page 1, line 11 of the proposed emergency regulation: "...expenditure limit, if any candidate in that race has accepted voluntary expenditure limits," and;
2. The option on page 1 line 13 read, "24."

There was no objection from the Commission.

Form 501

Ms. Wardlow presented the proposed changes to the form 501, which would implement the Government Code §85402 requirement that candidates report personal contributions in excess of the voluntary expenditure limits.

There was no objection from the Commission to making revisions on proposed form 501 instructions, changing the word "requirement" to "circumstance" and adding the words, "To do so, you" to the Amendment section of the instructions.

Form 460

Ms. Wardlow explained the proposed changes to the form 460 to implement changes necessitated by Proposition 34 and SB 2076, as well as changes to the cover page as requested by the Secretary of State's office.

There was no objection from the Commission to the proposed changes to the form 460.

Form 450

Ms. Wardlow presented proposed revisions to the form 450, requiring a breakdown "per election" of contributions made by some recipient committees.

There was no objection from the Commission to the proposed changes to form 450.

Form 461

Ms. Wardlow stated that changes to form 461 were not being considered at this time.

Form 496

Ms. Wardlow presented proposed revisions to the form 496 that would include a schedule for reporting contributions received, and include new contributor codes for political parties and small contributor committees.

There was no objection from the Commission to the proposed changes to form 496.

Form 497

Ms. Wardlow presented proposed changes to form 497 which would include the new contributor codes for political parties and small contributor committees and make technical changes which would make this form consistent with the form 496.

There was no objection from the Commission to the proposed changes to form 497.

Item #7. Proposition 34 Regulations: Treatment of Outstanding Debt and Officeholder Expenses (§85316) - Pre-notice Discussion of Regulation 18531.6 and 18531.7.

Ms. Menchaca presented the staff analysis for prenotice discussion of the proposed regulations, implementing Government Code §85316, which governs contributions received for an election after the election is held, and officeholder expenses. She noted that this is staff's first draft of the proposed regulations, and that staff wanted to provide an opportunity for everyone to provide input.

Ms. Menchaca explained that the staff memo included eight decision points for the Commission to consider, and that decision points one and four appear to be the most significant. Decision one deals with the effective date of the statute, and staff recommends two options dealing with that issue.

Ms. Menchaca noted that Decision 1 option (a) proposes that the Proposition 34 contribution limits for outstanding debt would apply prior to January 1, 2001. Option (b) would allow candidates to use the contribution limits in effect at the time of the original contribution.

Ms. Menchaca explained that Decision 4 involved officeholder expenses. She explained that §85316 limited fundraising to cover net debt or net debt and officeholder expenses, and that staff was not in agreement as to how it should be interpreted. By including officeholder expenses, officials could continue to allow fundraisers after the election for that purpose. If an officeholder was running for another office and was able to continue

raising funds for officeholder expenses, the monies raised could be transferred to a new election committee and the Commission needed to determine which contribution limits would apply.

Chairman Getman suggested that the Commission first decide whether the limitation on fundraising should apply to debt incurred prior to the effective date of Proposition 34, and noted that Proposition 34 was intended to apply after January 1, 2001.

Chairman Getman explained that elections prior to January 1, 2001 had no limits on fundraising for officeholder expenses. Section 85316, however, now provides that contributions may be accepted after the election only if those contributions are used to repay outstanding debt. She noted that an officeholder's campaign contributions can be transferred from one committee to another for the same officeholder, and are subject to attribution if the monies are to be used for a different election.

In response to a question, Staff Counsel Holly Armstrong stated that there was no guidance in the Proposition 34 voter pamphlet which would help deal with this issue.

Chairman Getman clarified that if regulation 85316 were to apply on or after January 1, campaign committees for elections held prior to January 1, 2001 could continue to fundraise for that committee and that fundraising would not be subject to the Proposition 34 limits. The committee could transfer monies to an election committee for an election to be held after January 1, but any fundraising for the latter committee would be subject to the Proposition 34 limits.

Commissioner Swanson noted that the authors of Proposition 34 did not intend for it to be effective prior to January 1, 2001.

Ms. Armstrong noted that the authors' intentions were irrelevant, but that the voter intent would be relevant. However, there was no way to know the voter intent and the ballot pamphlet for Proposition 34 provided no guidance.

Chairman Getman stated that she was not comfortable with changing the regulatory scheme for elections held prior to January 1, 2001. The regulatory changes would be cleaner if they are effective after January 1, but if that occurred, committees with outstanding debt could continue to raise money and transfer it to a new committee. If any of that money is transferred, it would then be subject to Proposition 34.

Commissioner Downey stated that the language of Regulation 85316 suggested that the regulations should affect conduct after January 1, 2001.

Chairman Getman noted that it would be complicated to require that officeholders know which rules were in effect, and that it would be easier to use the January 1, 2001 date.

Mr. Russo stated that it would be easier to enforce the January 1, 2001 date, but that staff could work with whatever policy the Commission decided.

Mr. Olson, speaking for the authors of Proposition 34, stated that it was never the author's intent to prevent term-limited members from raising funds for officeholder expenses. He stated that an officeholder should be able to fundraise for officeholder expenses if the officeholder was not running for office again.

Chairman Getman motioned that § 85316 be applied to elections taking place on or after January 1, 2001.

Commissioner Downey seconded the motion.

In response to a question, Chairman Getman noted that transferred monies are a different issue.

Commissioner Knox questioned why the date of the contribution is not the date that triggers the contribution limits.

Chairman Getman clarified that the last clause of the statute requires that the date of the election triggers the different contribution limits.

Commissioner Knox noted that contributions made prior to January 1, 2001, could be grandfathered into the regulation.

Commissioner Knox questioned what harm would occur if the limits applied to all contributions after January 1, 2001.

Chairman Getman responded that there may be candidates who have large outstanding debts incurred prior to January 1, 2001, and they would be allowed to continue raising money up to their net debt. Other candidates may not have any net debts and would not be allowed to raise money. Since the net debt monies raised are not required to be used to pay off the net debt and could be transferred to a new committee for a different campaign, it could put the candidate at a financial advantage.

Commissioner Downey suggested language reading "the" instead of "any" with regard to the applicable contribution.

Commissioner Knox stated that "the" would be the equivalent of "any."

Chairman Getman agreed with Commissioner Downey, noting that the statute would provide front and back end contribution limits for elections occurring after its effective date.

Commissioner Knox disagreed with Chairman Getman's motion, noting that there would be less violence to the text to have the contribution limits triggered by the date of the contributions.

Commissioner Swanson stated that it was a difficult issue, but that the Commission should consider the spirit of Proposition 34 because the voters approved it.

Chairman Getman re-read her motion that Regulation 85316 would apply to elections that take place on or after January 1, 2001.

Commissioner Knox clarified his position that §85316 contribution limits should apply to contributions made after January 1, 2001, even for elections which occur prior to January 1, 2001. In contrast, he added, Chairman Getman's position was that §85316 poses limitations only in connection with contributions for elections when the elections occurred after January 1, 2001.

Chairman Getman explained that if there was no applicable contribution limit for an election prior to January 1, 2001, there would be no contribution limit for fundraising purposes.

Commissioner Downey stated that, if the limits did not apply to contributions made before January 1, 2001, it could create an unfair advantage for officeholders with outstanding debt from an election held prior to that date.

Ms. Menchaca questioned whether Chairman Getman's reference to Government Code Section 85316 referred to contributions or fundraisers.

Chairman Getman responded that she meant fundraisers.

Commissioner Knox moved the question.

Chairman Getman clarified her motion that 85316 apply to elections that occurred on or after January 1, 2001, and only to such elections, both as to the limit on fundraising not to exceed net debt and as to limits on each contribution not exceeding the contribution limit.

In response to a question, Chairman Getman stated that candidates for a statewide office were a different issue.

Commissioner Swanson seconded the motion.

Commissioners Downey, Swanson and Chairman Getman voted "aye." Commissioners Knox and Scott voted "nay." The motion carried by a vote of 3-2.

Ms. Menchaca explained that the Commission must determine whether the interpretation of §85316 just provides fundraising caps to net debts outstanding.

In response to a question, Ms. Armstrong stated that federal regulations do not require that the net debt be paid off with contributions raised up to the amount of the officeholder's net debt, and that there is a definition of net debt outstanding in the federal

regulations. She explained that the Commission has the right to determine whether an officeholder could transfer monies raised to pay off net debts to another committee.

Ms. Menchaca explained that staff drafted a regulation to limit fundraising regardless of whether the officeholder chooses to pay off the debt. She noted that otherwise it may encourage officeholders to incur huge debts.

Commissioner Scott discussed whether the Commission had the authority to limit the use of the money.

Commissioner Knox responded that language of §85316 indicates that the monies should be used to pay off debt.

Commissioner Scott noted that it does not talk about the use of the contributions, and questioned whether the Commission had the authority to place limits on the use of the contributions.

Commissioner Downey stated that there should still be a way to raise money for officeholder expenses.

Ms. Armstrong stated that using the January 1, 2001 effective date would allow current termed-out officeholders to raise money for officeholder expenses, and added that future termed-out officeholders will be aware that they need to have officeholder funds on hand because of the new regulations.

Scott Hallabrin, representing the Assembly Ethics Committee, noted that §85316 does not mention officeholder expenses. He believed that it applies to debts raised after an election. He pointed out that when an officeholder receives a contribution, the officeholder does not know the purpose of the contribution until it is put into an account. He stated that contributions must be tied to an election, but that the limits should not apply to debts incurred prior to January 1, 2001.

Chairman Getman suggested that the statute needed an officeholder provision.

Ms. Menchaca stated that there is very little that would provide guidance on the officeholder issue. If the Commission decided to pursue creating a section regarding contributions that may or may not have limits it could become very complicated and she did not believe it would be a good approach. It also raised the issue of payments under the PRA, and suggests that the Commission can create something that is not a contribution or an expenditure. She preferred the cap approach.

In response to a question, Ms. Menchaca noted that there is no such thing as an officeholder account, which would allow officeholders to raise money just for that purpose.

Chairman Getman observed that there are two ways to fundraise for officeholder expenses. Fundraising can be done prior to the election, or by interpreting §85316 to allow using campaign contributions for officeholder expenses.

In response to a question, Ms. Menchaca stated that loans become contributions when it is clear that there is no intention to insist on repayment of the loan.

Commissioner Knox questioned what would happen to the contribution once it was converted.

Mr. Hallabrin clarified that officeholder expenses can be paid out of current or future candidate accounts. Officeholder expenses are usually paid out of the campaign account for the office the expenses were incurred in. He suggested that if the termed-out officeholders are not allowed to raise money for expenses, it could encourage the opening of phony future election accounts to pay for those officeholder expenses.

Commissioner Scott left the meeting at 4:30 p.m.

Chairman Getman asked whether the Commission had ever before determined how money could be spent.

Ms. Menchaca responded that she knew of no instances

Commissioner Knox motioned that staff prepare a regulation requiring contributions raised under §85316 be used to pay off debt.

Commissioner Swanson seconded the motion.

Commissioner Knox explained that this would be a fair construction of the statute, noting that the legislature may make a statute addressing officeholder expenses.

In response to a question, Ms. Armstrong explained that decision 6 of the proposed regulation would not allow a debt incurred after an election to be considered a "net debt outstanding."

Mr. Olson did not agree, noting that, with respect to an election, a debt could arise after the election but in connection with the election. He also suggested that the cost of raising money should be factored in.

Ms. Armstrong agreed that under the current proposed definition, such debts would be included. She stated that fundraising costs were also included in the regulation.

Chairman Getman stated that contributions should be limited to the amount of the net debt but that nothing in the statute required the contributions be used to pay off net debt.

Commissioner Knox noted that his motion included no definition of the term "net debt."

Commissioners Swanson and Knox voted "aye." Commissioner Downey and Chairman Getman voted "nay." The motion did not carry by a vote of 2-2.

Chairman Getman suggested that staff draft both options for the Commission to consider at the July 2001 meeting.

Item #10. Legal Division Regulation Calendar - June Work Plan Revisions.

There being no objection, this item was approved on the consent calendar.

Items #8 & #9.

Item #8. Proposition 34 Regulations: Transfer and Attribution (§85306) - Second Pre-notice Discussion of Proposed Regulation 18536.

Item #9. Proposition 34 Regulations: Pre-notice Discussion of Regulatory Action Regarding Sections 85304 (Legal Defense Funds), 85308 (Contributions from Monors) and 85700 (Donor Information/Contribution Return); Proposed Regulation 18530.4, 18570.

After some discussion, the Commission agreed to review these items if there was time later in the meeting.

Item #13. *In the Matter of Robert Prenter and the Committee to Elect Robert Prenter for Assembly, FPPC No. 96/304.* (2 counts.)

Staff Counsel Melodee Mathay gave a brief presentation of the stipulation.

Chairman Getman motioned that the stipulation be approved.

Commissioner Swanson seconded the motion.

There being no objection, the motion carried.

Items #14 and #15.

Commissioner Swanson motioned that the following stipulations be approved:

Item #14. *In the Matter of Lieff, Cabraser, Heimann & Bernstein, LLP, FPPC No. 01/025.* (1 count.)

Item #15. *In the Matter of Santa Clarita Valley Congress of Republicans, FPPC No. 99/358.* (1 count.)

There being no objection, the motion was approved.

Item #11. In the Matter of Gerald Geismar, FPPC No. 99/188. (7 counts.)

Executive Director Wayne Strumpfer explained that staff was requesting that the Commission establish a fine policy for these types of cases, noting that enforcement staff has been working on this case for several months, and this type of case has been handled by FPPC enforcement staff only a few times.

Mr. Strumpfer explained that Mr. Geismar did file an SEI and did not conceal anything. The economic interests in his actions are not readily obvious or measurable. Enforcement staff requested that the Commission provide guidance on the fine.

Staff Counsel Amy Holloway presented the case. She emphasized that the parties stipulated that the violations occurred.

Ms. Holloway believed that staff's recommended fine of \$14,000 was appropriate because Mr. Geismar had investments, ranging from \$10,001 to \$100,000, in several companies who had applied for training grants from the Employment Training Panel (ETP), while Mr. Geismar served as executive director for that agency. Mr. Geismar stipulated that he had participated in making governmental decisions approving the training grants for those companies he had invested in.

Ms. Holloway explained the standards for determining that a conflict exists, and noted that there was a clear benefit to the companies because they received the training funds. She stated that Mr. Geismar knew that the possibility of a conflict existed because he knew about his investments, and had completed and filed a Statement of Economic Interest which offered instructions specifying the reasons for disclosing the conflict of interest. She noted that Mr. Geismar was responsible for reviewing and approving the agency's conflict of interest packets for panel members.

Ben Davidian, attorney for Mr. Geismar, stated that the proposed fine was too high. He explained that Mr. Geismar was now retired, and that the only work Mr. Geismar is currently involved in is volunteer work and that he would no longer be involved in public service.

Mr. Davidian stated that Mr. Geismar admitted his violation. He pointed out that the Commission has recognized that the regulations and forms are confusing.

Mr. Davidian explained that the ETP was created to provide training, and that out of the 2,000 applicants who applied for the training grants, only about a dozen were turned down and only for technical reasons. He stated that the Mr. Geismar served as executive director of ETP and had investments in seven of the companies that received grants from ETP. As executive director, Mr. Geismar presented the grant applications to the panel through the staff, and the panel voted on whether to approve the grants. Mr. Geismar would then sign the contract.

Mr. Davidian explained that the grants could only be used for providing training, and could not possibly affect a shareholder. The training funds could not be used to supplant training programs already offered by the companies. Mr. Davidian agreed that the companies received the benefit of getting skilled workers they would not ordinarily get. He pointed out, however, that the money does not go to the company's bottom line and does not effect the financial interest of the shareholder.

Mr. Davidian referred the Commission to Regulation 18361, and stated that the Commission should consider the seriousness of the violation, the presence or absence of any intention to conceal, whether the violation was deliberate or involved a pattern of misconduct.

Mr. Davidian noted that during Mr. Geismar's 7 years with the ETP, none of the staff lawyers ever told him that he had a conflict of interest and that he could not participate in the decisions. He explained that the companies involved in the conflict of interest were very large companies, and that Mr. Geismar did not receive any benefit from the training grant.

Mr. Davidian disagreed that Mr. Geismar be fined the maximum possible fine because there was no intent to conceal and because this should not be considered an egregious act. He believed the violations should receive a minimal fine or even just a warning letter.

Gerald Geismar, respondent, stated that he did not recall anything specific advising him or the panel that he should have recused himself, noting that he was given a copy of the regulations but he did not understand them.

In response to a question from Chairman Getman, Mr. Geismar stated that he reviewed the proposals for training grants but did not make the final decisions on whether to approve the grants. His review of the proposals was passed on to the panel for the final decision. He stated that he did not make a recommendation, but did agree to pass on to the panel the recommendation from the local manager who developed the project.

Ms. Holloway noted that Mr. Geismar's investments in the companies was significant, and that whether there was a "bottom line" effect for Mr. Geismar was not an issue. She explained that a conflict exists when there is "any financial effect" on the company according to the statute.

Mr. Davidian agreed that the "bottom line" issues did not affect the question of whether a violation occurred, but believed that they should be considered when determining the amount of the fine. He argued that the grants served the public good.

In response to a question, Mr. Geismar stated that he did not solicit applicants for the program.

Mr. Davidian agreed that the violations were serious, but pointed out Mr. Geismar did not know that he had a conflict and should not have participated.

Chairman Getman commented that it was a clear violation involving large grants. She pointed out that one of the seven companies received \$1.5 million.

Mr. Davidian agreed that the violations meet the standards for conflicts, but noted that the grants must be use for specific training programs.

In response to a question, Mr. Geismar stated that he participated in all of the 2,000 grant applications, and noted that he brought the possible conflicts to the attention of the FPPC when he requested advice from the FPPC through the advice letter process.

Ms. Holloway clarified that there were a couple of additional contracts that were not charged against Mr. Geismar because the statute of limitations had run out, and that amendments were added to the stipulation because staff had discovered some of the violations during their investigation.

Commissioner Knox asked Mr. Davidian what fine would be fair.

Mr. Davidian suggested \$200 per count.

Ms. Holloway objected to this amount because of the seriousness of the violations, noting that amendments were filed and that the violations occurred over a period of time.

Chairman Getman stated that the violations were serious and that she was leaning toward treating the fine seriously.

Commissioner Downey stated that the grants involved substantial sums of money and that he was surprised that Mr. Geismar did not ask the question sooner. He suggested that it was at least gross negligence, and suggested a fine of \$1,500 per count.

Commissioner Knox recommended a fine of \$1,000 per count because Mr. Geismar's role was small.

Ms. Holloway further clarified that Mr. Geismar came forward and requested advice from the FPPC only after the story on the conflict had been printed in the newspaper.

Commissioner Swanson stated that she could not believe that a savvy businessman could do this, and supported the staff's intent to fine the maximum amount. She stated that, in this case, an exception could be made to the maximum fine just to lay the issue to rest. She recommended a fine of \$8,400.

Commissioner Knox motioned that Mr. Geismar be fined \$8,400.

Commissioner Swanson seconded the motion, but noted that she was not sending the message that staff should recommend less than the maximum fines for future cases.

Chairman Getman stated that the fine seemed too low.

Commissioner Downey agreed that it was too low considering the egregious nature of the violations.

Chairman Getman suggested that the fine be \$1,250 per count, and noted that she was persuaded to go that low only because Mr. Geismar played a small role in the decision.

Mr. Strumpfer asked the Commission to clarify a fine policy for future cases.

Commissioner Swanson responded that if Mr. Geismar were still in the job, she would not have recommended the lower fine, and encouraged staff to pursue the maximum fines in future cases.

Commissioner Knox agreed to amend his motion to fine Mr. Geismar \$8,750.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried unanimously.

Item #19(a), #19(b), and #19(e)

Commissioner Swanson stated that the recommended fines seemed too low, and requested that staff revisit the fine policy for the major donor expedited cases.

Commissioner Swanson motioned that the following stipulations be approved:

- Item 19(a). *In the Matter of Bob Hampton, FPPC No. 2001-132.* (1 count.)**
- Item 19(b). *In the Matter of Peter Formuzis, FPPC No. 2001-229.* (1 count.)**
- Item 19(e). *In the Matter of WESTCO Community Builders, Inc., FPPC No. 2001-239.* (2 counts.)**

There being no objection, the motion carried.

Item #24. Legislative Report

Chairman Getman expressed her concern that the Commission's decision in the *Olson* opinion could be read to erroneously infer that the Commission does not support full disclosure by the political parties. She suggested that the Commission send a letter to the legislature encouraging passage of that portion of SB 34 that deals with the disclosure requirements for the political parties.

There being no objection, the Commissioners agreed to send the letter.

The meeting adjourned at 5:40 p.m.

Dated: July 9, 2001

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman